

STATE OF NORTH CAROLINA

WAKE COUNTY

APR 2011

FILED DHC

BEFORE THE  
DISCIPLINARY HEARING COMMISSION  
OF THE  
NORTH CAROLINA STATE BAR  
11 DHC 10

THE NORTH CAROLINA STATE BAR

Plaintiff

v.

GARY A. SCARZAFAVA, Attorney,

Defendant

COMPLAINT

Plaintiff, complaining of Defendant, alleges and says:

1. Plaintiff, the North Carolina State Bar ("State Bar"), is a body duly organized under the laws of North Carolina and is the proper party to bring this proceeding under the authority granted it in Chapter 84 of the General Statutes of North Carolina, and the Rules and Regulations of the North Carolina State Bar (Chapter 1 of Title 27 of the North Carolina Administrative Code).

2. Defendant, Gary A. Scarzafava ("Scarzafava"), was admitted to the North Carolina State Bar on November 17, 2000, and is, and was at all times referred to herein, an attorney at law licensed to practice in North Carolina, subject to the laws of the State of North Carolina, the Rules and Regulations of the North Carolina State Bar and the Rules of Professional Conduct.

Upon information and belief:

3. During all or part of the relevant periods referred to herein, Scarzafava was engaged in the practice of law in the State of North Carolina and maintained a law office in Raleigh, Wake County, North Carolina.

4. From about June 2008 through February 2010, Scarzafava was employed as an associate attorney of the Kestenbaum Law Firm, P.C. ("the Firm").

5. The Firm paid Scarzafava a bi-weekly salary in compensation for the work he performed as an associate for the Firm.

6. Scarzafava's work as an associate with the Firm included both representing clients and serving as a mediator.

7. All fees generated by Scarzafava from his work representing clients or from his work as mediator belonged to the Firm.
8. Any time Scarzafava spent serving as mediator was required to be billed through the Firm's timekeeping software.
9. On or about February 3, 2010, Scarzafava served as mediator in the case of *Dedrick Payton v. City of Wilson*, IC No. 036916 ("the *Payton* case").
10. Scarzafava provided one or both of the parties in the *Payton* case with a "Mediation Invoice" on his own letterhead, rather than a Firm invoice.
11. Scarzafava did not enter his time as mediator in the *Payton* case into the Firm's timekeeping software and did not provide a Firm invoice to either party in the *Payton* case.
12. Scarzafava received payment for the mediation fee in the *Payton* case directly from one or both of the parties in the *Payton* case.
13. The mediation fee was made payable to Gary Scarzafava, not to the Firm.
14. Scarzafava failed to provide the mediation fee that he received in the *Payton* case to the Firm.
15. It was the Firm's practice for case events, case deadlines, attorney appointments, and Mr. Scarzafava's mediations to be placed on the Firm's Outlook electronic calendar.
16. Although Scarzafava had scheduled the mediation on the Firm's Outlook electronic calendar, Scarzafava subsequently falsely marked the February 3, 2010 mediation as cancelled.
17. On or about February 18, 2010, Scarzafava left employment with the Firm with no prior notice to the Firm and in a manner that undermined or was likely to undermine the confidence of the Firm's clients in the Firm.

THEREFORE, Plaintiff alleges that Defendant's foregoing actions constitute grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(2) in that Defendant violated the Rules of Professional Conduct in effect at the time of the conduct as follows:

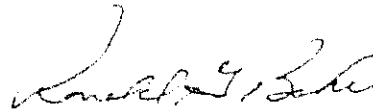
- a. By misappropriating the mediation fee from the Firm, Scarzafava committed a criminal act that reflects adversely on his honesty, trustworthiness or fitness as a lawyer in violation of Rule 8.4(b) and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c); and
- b. By misrepresenting that the mediation was cancelled and thereby attempting to hide his misappropriation of the mediation fee from

the Firm, Scarzafava engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c).

WHEREFORE, Plaintiff prays that:

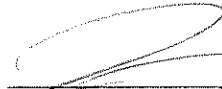
- (1) Disciplinary action be taken against Defendant in accordance with N.C. Gen. Stat. § 84-28(a) and § .0114 of the Discipline and Disability Rules of the North Carolina State Bar (27 N.C.A.C. 1B § .0114), as the evidence on hearing may warrant;
- (2) Defendant be taxed with the fees and costs permitted by law in connection with this proceeding; and
- (3) For such other and further relief as is appropriate.

The 11<sup>th</sup> day of April 2011.



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Ronald G. Baker, Sr., Chair  
Grievance Committee



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